

**KILPATRICK TOWNSEND &  
STOCKTON LLP**

James A. Trigg (5780648)  
Georges Nahitchevansky (GN 7750)  
Briggs M. Wright (BW 1979)  
1114 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 775-8700  
Facsimile: (212) 775-8800

*Attorneys for Defendants  
Despegar.com Corp. and  
Despegar.com USA, Inc.*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE WAVE STUDIO, LLC,

Plaintiff,

v.

TRIVAGO N.V., TRIVAGO SERVICES US, LLC,  
TRIP.COM GROUP LIMITED, TRIP.COM TRAVEL  
SINGAPORE PTE. LTD., SKYSCANNER LTD.,  
MAKEMYTRIP INDIA PVT. LTD.,  
MAKEMYTRIP.COM, INC., DESPEGAR.COM  
CORP., AND DESPEGAR.COM USA, INC.,

Defendants.

Case No. 7:23-cv-03586-NSR

**DEFENDANTS**  
**DESPEGAR.COM CORP.'S AND**  
**DESPEGAR.COM USA, INC.'S**  
**ANSWER TO SECOND**  
**AMENDED COMPLAINT**

Defendants Despegar.com Corp. (“Despegar”) and Despegar.com USA, Inc. (“Despegar USA”) (collectively the “Despegar Defendants”), by and through undersigned counsel, hereby submit their Answer to the Second Amended Complaint, filed by The Wave Studio, LLC on June 5, 2023.

**NATURE OF THIS ACTION**

1. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 regarding *The Wave Studio, LLC v. General Hotel Management Ltd. et al.*, Case No.: 7:13-cv-09239-CS-PED, and on that basis deny each and every one of them. The Despegar Defendants deny the remaining allegations set forth in Paragraph 1.

2. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 and on that basis deny each and every one of them.

3. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 and on that basis deny each and every one of them.

4. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 and on that basis deny each and every one of them.

5. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 and on that basis deny each and every one of them.

6. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 and on that basis deny each and every one of them.

7. Paragraph 7 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 7. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 7 and on that basis deny each and every one of them.

8. The Despegar Defendants admit that Plaintiff purports to seek alleged damages in connection with this action. The Despegar Defendants otherwise deny the allegations set forth in Paragraph 8.

9. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 and on that basis deny each and every one of them.

10. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 and on that basis deny each and every one of them.

### **JURISDICTION AND VENUE**

11. The Despegar Defendants admit that Plaintiff purports to bring this action under the Copyright laws of the United States, Title 17 of the United States Code.

12. The Despegar Defendants admit that the Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1338 and 2201 to the extent the claims alleged against the Despegar Defendants arise under Title 17 of the United States Code.

13. The Despegar Defendants deny that the Court has personal jurisdiction over them. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 13 and on that basis deny each and every one of them.

14. The Despegar Defendants deny that venue properly lies in this District as to Plaintiff's claims against them. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 14 and on that basis deny each and every one of them.

### **THE PARTIES**

15. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 and on that basis deny each and every one of them.

16. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 and on that basis deny each and every one of them.

17. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 and on that basis deny each and every one of them.

18. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 and on that basis deny each and every one of them.

19. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 and on that basis deny each and every one of them.

20. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20 and on that basis deny each and every one of them.

21. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 and on that basis deny each and every one of them.

22. Despegar denies that its principal executive office is located at Juana Manso 999, Ciudad Autónoma de Buenos Aires, Argentina C1107CBR. Despegar admits that its principal place of business is located at Avenida Jujuy 2013, Ciudad Autónoma de Buenos Aires, Argentina C1247ABI. Despegar denies that it regularly transacts or solicits business in this District. Despegar admits the remaining allegations set forth in Paragraph 22.

23. Despegar USA denies that it regularly transacts or solicits business in this District. Despegar USA admits the remaining allegations set forth in Paragraph 23.

## **FACTUAL BACKGROUND**

### **A. Allegations Regarding Creation of the Works at Issue**

24. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 and on that basis deny each and every one of them.

25. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 and on that basis deny each and every one of them.

26. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 and on that basis deny each and every one of them.

27. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27 and on that basis deny each and every one of them.

28. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 and on that basis deny each and every one of them.

**B. Allegations Regarding Plaintiffs Registered Copyrights in the Photographs at Issue**

29. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 and on that basis deny each and every one of them.

30. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30 and on that basis deny each and every one of them.

**C. Allegations Regarding the Original New York Action**

31. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 31 and on that basis deny each and every one of them.

32. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 and on that basis deny each and every one of them.

33. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 and on that basis deny each and every one of them.

34. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 and on that basis deny each and every one of them.

35. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 and on that basis deny each and every one of them.

**D. Allegations Regarding the Singapore Trial**

36. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 36 and on that basis deny each and every one of them.

37. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37 and on that basis deny each and every one of them.

38. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 38 and on that basis deny each and every one of them.

**E. Allegations Regarding the Singapore Appeal**

39. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 39 and on that basis deny each and every one of them.

**F. Allegations Regarding Defendants' Alleged Infringement of Plaintiff's Copyrights**

40. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 40 and on that basis deny each and every one of them.

41. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 and on that basis deny each and every one of them.

42. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42 and on that basis deny each and every one of them.



43. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 43 and on that basis deny each and every one of them.

44. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 44 and on that basis deny each and every one of them.

45. Despegar USA admits that it is affiliated with Despegar. Despegar USA denies the remaining allegations set forth in Paragraph 45.

46. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 46 and on that basis deny each and every one of them.

47. Paragraph 47 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 47. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 47 and on that basis deny each and every one of them..

48. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 48 and on that basis deny each and every one of them.

49. Paragraph 49 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against

them in Paragraph 49. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 49 and on that basis deny each and every one of them.

**G. Allegations Regarding Plaintiff's Motion**

50. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 50 and on that basis deny each and every one of them.

51. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 51 and on that basis deny each and every one of them.

52. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 52 and on that basis deny each and every one of them.

53. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 53 and on that basis deny each and every one of them.

54. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 54 and on that basis deny each and every one of them.

55. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55 and on that basis deny each and every one of them.

56. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 56 and on that basis deny each and every one of them.

57. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 57 and on that basis deny each and every one of them.

58. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 58 and on that basis deny each and every one of them.

59. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 59 and on that basis deny each and every one of them.

60. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 60 and on that basis deny each and every one of them.

61. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 61 and on that basis deny each and every one of them.

62. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 62 and on that basis deny each and every one of them.

63. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 63 and on that basis deny each and every one of them.

64. Paragraph 64 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations in Paragraph 64.

65. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 and on that basis deny each and every one of them.

**PLAINTIFF'S FIRST CLAIM FOR RELIEF  
(Copyright Infringement Against All Defendants)  
(17 U.S.C. § 101 *et seq.*)**

66. In response to Paragraph 66, the Despegar Defendants repeat and reallege their responses to Paragraphs 1-65 as if fully set forth herein.

67. Paragraph 67 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 67. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 67 and on that basis deny each and every one of them.

68. Paragraph 68 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 68. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 68 and on that basis deny each and every one of them.

69. The Despegar Defendants deny the allegations set forth against them in Paragraph 69. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 69 and on that basis deny each and every one of them.

70. Paragraph 70 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 70. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 70 and on that basis deny each and every one of them.

71. Paragraph 71 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 71. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 71 and on that basis deny each and every one of them.

72. Paragraph 72 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 72. The Despegar Defendants lack knowledge and information sufficient to

form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 72 and on that basis deny each and every one of them.

73. Paragraph 73 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 73. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 73 and on that basis deny each and every one of them.

74. The Despegar Defendants admit that Plaintiff purports to seek alleged damages recoverable under the Copyright Act. The Despegar Defendants otherwise deny the allegations set forth against them in Paragraph 74. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 74 and on that basis deny each and every one of them.

**PLAINTIFF'S SECOND CLAIM FOR RELIEF**  
**(Contributory Copyright Infringement Against All Defendants)**  
**(17 U.S.C. § 101 *et seq.*)**

75. In response to Paragraph 75, the Despegar Defendants repeat and reallege their responses to Paragraphs 1-74 as if fully set forth herein.

76. Paragraph 76 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 76. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 76 and on that basis deny each and every one of them.

77. Paragraph 77 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 77. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 77 and on that basis deny each and every one of them.

78. Paragraph 78 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 78. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 78 and on that basis deny each and every one of them.

79. Paragraph 79 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 79. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 79 and on that basis deny each and every one of them.

80. Paragraph 80 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 80. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 80 and on that basis deny each and every one of them.

81. Paragraph 81 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against

them in Paragraph 81. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 81 and on that basis deny each and every one of them.

82. The Despegar Defendants admit that Plaintiff purports to seek alleged damages recoverable under the Copyright Act. The Despegar Defendants otherwise deny the allegations set forth against them in Paragraph 82. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 82 and on that basis deny each and every one of them.

**PLAINTIFF'S THIRD CLAIM FOR RELIEF**  
**(Vicarious Copyright Infringement Against All Defendants)**  
**(17 U.S.C. § 101 *et seq.*)**

83. In response to Paragraph 83, the Despegar Defendants repeat and reallege their responses to Paragraphs 1-82 as if fully set forth herein.

84. Paragraph 84 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 84. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 84 and on that basis deny each and every one of them.

85. Paragraph 85 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 85. The Despegar Defendants lack knowledge and information sufficient to



form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 85 and on that basis deny each and every one of them.

86. Paragraph 86 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 86. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 86 and on that basis deny each and every one of them.

87. Paragraph 87 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 87. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 87 and on that basis deny each and every one of them.

88. The Despegar Defendants deny the allegations set forth against them in Paragraph 88. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 88 and on that basis deny each and every one of them.

89. Paragraph 89 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 89. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 89 and on that basis deny each and every one of them.

90. Paragraph 90 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 90. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 90 and on that basis deny each and every one of them.

91. Paragraph 91 sets forth legal conclusions to which no response is required. To the extent a response is required, the Despegar Defendants deny the allegations set forth against them in Paragraph 91. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 91 and on that basis deny each and every one of them.

92. The Despegar Defendants admit that Plaintiff purports to seek alleged damages recoverable under the Copyright Act. The Despegar Defendants otherwise deny the allegations set forth against them in Paragraph 92. The Despegar Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth against any other Defendant in Paragraph 92 and on that basis deny each and every one of them.

### **THE DESPEGAR DEFENDANTS' AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

##### **Failure to State a Claim**

Plaintiff's claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

##### **Laches**

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**  
**Waiver**

Plaintiff, through its conduct, representations, and omissions, has waived, relinquished, or abandoned any claims for relief.

**FOURTH AFFIRMATIVE DEFENSE**  
**Estoppel**

Plaintiff is barred from pursuing its claims, in whole or in part, based on the equitable doctrine of estoppel.

**FIFTH AFFIRMATIVE DEFENSE**  
**Acquiescence**

Plaintiff is barred from pursuing its claims, in whole or in part, based on the equitable doctrine of acquiescence.

**SIXTH AFFIRMATIVE DEFENSE**  
**Statute of Limitations**

Plaintiff is barred from pursuing its claims, in whole or in part, by the applicable statute of limitations.

**WHEREFORE**, the Despegar Defendants pray for judgment as follows:

1. That Plaintiff take nothing by way of its Second Amended Complaint;
2. That the Second Amended Complaint be dismissed in its entirety with prejudice;
3. That the Despegar Defendants be awarded their costs of suit incurred herein in connection with this action, including reasonable attorneys' fees; and
4. For such other and further relief as the Court deems just and proper.

DATED: November 8, 2023

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ James A. Trigg

James A. Trigg (5780648)  
jtrigg@kilpatricktownsend.com

Georges Nahitchevansky (GN 7750)  
ghn@kilpatricktownsend.com

Briggs M. Wright (BW 1979)  
briggs.wright@kilpatricktownsend.com

1114 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 775-8700  
Facsimile: (212) 775-8800

*Attorneys for Defendants  
Despegar.com Corp. and  
Despegar.com USA, Inc.*